

Message Text

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ACTION OES-06

INFO OCT-01 ISO-00 AF-08 ARA-06 EA-07 EUR-12 NEA-10 FEA-01

ACDA-07 AGR-05 AID-05 CEA-01 CEQ-01 CG-00 CIAE-00

CIEP-01 COME-00 DLOS-06 DODE-00 DOTE-00 EB-07 EPA-01

ERDA-05 FMC-01 TRSE-00 H-02 INR-07 INT-05 IO-13

JUSE-00 L-03 NSAE-00 NSC-05 NSF-01 OMB-01 PA-01 PM-04

PRS-01 SP-02 SS-15 USIA-06 SAL-01 OIC-02 ERDE-00 /160 W

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P R 101245Z JUL 76

FM AMEMBASSY PARIS

TO SECSTATE WASHDC PRIORITY 2868

INFO AMEMBASSY BRUSSELS

AMEMBASSY RUENOS AIRSE

AMEMBASSY CANBERRA

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY OSLO

AMEMBASSY PRETORIA

AMEMBASSY SANTIAGO

AMEMBASSY TOKYO

USMISSION USUN

AMEMBASSY WELLINGTON

C O N F I D E N T I A L SECTION 1 OF 2 PARIS 20199

EO 11652: GDS

TAGS: XV, TGEN, PLOS

SUBJ: SPECIAL ANTARCTIC PREPARATORY MEETING: LEGAL/
POLITICAL WORKING GROUP - SECOND (FINAL) WEEK SUMMARY
REPORT

REF: (A) PARIS 19688; (B) PARIS 19737

1. SUMMARY. LEGAL/POLITICAL WORKING GROUP DISCUSSED
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IN PRELIMINARY FASHION THE NATURE AND CONTENT OF A

REGIME FOR ANTARCTIC RESOURCE ACTIVITIES.

DISCUSSIONS BASICALLY FOLLOWED OUTLINE OF UK DRAFT WORKING PAPER WHICH SATISFACTORILY STATED THE ISSUES. WITH EXCEPTION OF USSR AND JAPAN, DELEGATIONS APPEARED PREPARED FOR SERIOUS DISCUSSION OF A POSSIBLE REGIME. END SUMMARY.

2. AT START OF WEEK, UK, AFTER CONSULTATION WITH US, INTRODUCED WORKING PAPER WHICH IDENTIFIED A SERIES OF ISSUES THAT MUST BE CONSIDERED WHEN CONTEMPLATING ANY REGIME FOR MINERAL RESOURCES ACTIVITIES. THIS WORKING PAPER SERVED AS THE BASIS FOR DISCUSSION THROUGHOUT THE WEEK, REPLACING OTHER DOCUMENTS SUBMITTED BY NEW ZEALAND AND AUSTRALIA. THE USSR ALSO SUBMITTED WORKING PAPERS LATER IN THE WEEK.

3. THE NEW ZEALAND PAPER WAS DESIGNED PRIMARILY TO DEAL WITH ENVIRONMENTAL PROTECTION RATHER THAN EXPLOITATION OF RESOURCES. THE PRINCIPAL TECHNIQUE FOR PROTECTION OF THE ENVIRONMENT WAS THE DESIGNATION OF GEOGRAPHICAL AREAS WHERE RESOURCES ACTIVITIES WOULD BE PROHIBITED. A REGULATORY COMMITTEE COMPOSED OF THE TWELVE WOULD CONSIDER ALL PROPOSALS FOR RESOURCES ACTIVITIES AND APPROVAL WOULD REQUIRE UNANIMITY. THIS PRINCIPLE OF UNANIMITY, AS EXPLAINED BY NEW ZEALAND, WOULD REQUIRE THE PARTIES SEEKING TO EXPLOIT TO MAKE A SIDE DEAL WITH THE CLAIMANT STATE TO INSURE THAT CLAIMANT DID NOT VETO PROJECT. NEW ZEALAND VIEWED SUCH A PRIVATE ARRANGEMENT AS NON-PREJUDICIAL TO POSITION OF CLAIMANT AND NON-CLAIMANT STATES. THE PAPER ALSO FORESEES REVENUE SHARING WITH THE INTERNATIONAL COMMUNITY.

4. THE SHORT AUSTRALIAN PAPER CALLED FOR INCLUDING LANGUAGE IN SPECIAL PREPARATORY MEETING REPORT THAT STATED THE DEEP SEABED BEYOND THE LIMITS OF NATIONAL JURISDICTION SOUTH OF 60 DEGREES WAS THE COMMON HERITAGE OF MANKIND AND SUBJECT TO LOS REGIME FOR RESOURCES ACTIVITIES IN THE DEEP SEABED.

5. SOVIET WORKING PAPER CALLED FOR A TIME CERTAIN MORATORIUM WITH DURATION TO BE AGREED UPON, DURING WHICH INTENSE STUDIES WOULD BE MADE OF THE FEASIBILITY OF RESOURCE ACTIVITIES. IN DEBATE, USSR MENTIONED A TIME PERIOD OF TEN TO FIFTEEN YEARS. IF EXPLOITATION

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PROVED FEASIBLE, CONSULTATIVE PARTIES WOULD THEN PROCEED TO ESTABLISH REGIME FOR RESOURCE ACTIVITIES. IF REGIME NOT ELABORATED PRIOR TO END OF MORATORIUM PERIOD, STATES COULD "TAKE PRACTICAL ACTION FOR RESOURCE ACTIVITIES IN ANTARCTICA, OBSERVING ALL THE REQUIREMENTS OF THE LEGAL SYSTEM GOVERNING SUCH ACTIVITIES."

6. THE FIRST ITEM DEALT WITH BY THE UK WORKING PAPER WAS AREA THE REGIME SHOULD COVER. WITH RESPECT TO

THE DEEP SEABED SOUTH OF 60, AUSTRALIA, BELGIUM, CHILE, NEW ZEALAND, NORWAY, US AND US WERE OF THE VIEW THAT LAW OF THE SEA REGIME SHOULD APPLY. THE USSR AND FRANCE WERE STRONGLY OPPOSED TO ANY REGIME OTHER THAN ANTARCTIC TREATY APPLYING TO DEEP SEABED SOUTH OF 60 AND SOUTH AFRICA, ARGENTINA AND JAPAN OPPOSITION TO LOS REGIME WAS NOT AS STRONGLY ASSERTED. AUSTRALIAN PAPER DESCRIBED IN PARAGRAPH 4, THEREFORE, DID NOT RECEIVE A CONSENSUS.

7. WITH RESPECT TO UNCLAIMED SECTOR, THERE WAS GENERAL AGREEMENT THAT REGIME CONTEMPLATED SHOULD DEAL WITH ANTARCTIC AS A WHOLE. CHILE, WHICH UNLIKE JAPAN, USSR AND US WHO PERCEIVED NO DIFFERENCE BETWEEN CLAIMED AND UNCLAIMED SECTOR, PERCEIVED A DIFFERENCE BUT RECOGNIZED THAT SOME FORM OF JURISDICTION WAS EXERCISED BY THE TWELVE IN UNCLAIMED SECTOR AND ACQUIESCED IN CONCEPT OF REGIME APPLYING TO CONTINENT AS A WHOLE. SIMILAR VIEWS WERE EXPRESSED BY UK, AUSTRALIA AND NEW ZEALAND. NEW ZEALAND FURTHER STATED THAT LOS REGIME SHOULD NOT APPLY TO CONTINENTAL SHELF OF UNCLAIMED SECTOR. UK (WOOD) AGAIN SUGGESTED LOS COMMITTEE I TEXT SHOULD BE AMENDED TO DESCRIBE THE INTERNATIONAL AREA AS "THE DEEP SEABED BEYOND THE LIMITS OF THE CONTINENTAL SHELF AS DEFINED IN ARTICLE (BLANK)". THE UK SAID THAT IF LOS REGIME APPLIED TO CONTINENTAL SHELF OF UNCLAIMED SECTOR, SOME OF THE TWELVE MAY FEEL COMPELLED TO APPLY THE LOS REGIME TO THE ENTIRE ANTARCTIC SHELF. THE US INDICATED THIS REMAINED A POSSIBILITY ALTHOUGH OUR PREFERENCE WAS FOR A SPECIAL REGIME. AUSTRALIA, WHILE ACKNOWLEDGING APPLICATION OF LOS REGIME TO SHELF OF UNCLAIMED SECTOR ONLY WOULD FORTIFY AUSTRALIAN POSITION, NEVERTHELESS AGREED THAT THE POSSIBLE ANTARCTIC RESOURCE REGIME SHOULD APPLY TO BOTH CLAIMED AND UNCLAIMED SECTORS. CONFIDENTIAL

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NO OBJECTION WAS INTERPOSED WHEN THE CHAIRMAN SUMMARIZED BY STATING THAT IT WAS CLEAR THE TWELVE WERE NOT GOING TO GIVE UP THEIR INTERESTS IN THE UNCLAIMED SECTOR.

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ACTION OES-06

INFO OCT-01 ISO-00 AF-08 ARA-06 EA-07 EUR-12 NEA-10

ACDA-07 AGR-05 AID-05 CEA-01 CEQ-01 CG-00 CIAE-00

CIEP-01 COME-00 DLOS-06 DODE-00 DOTE-00 EB-07 EPA-01

ERDA-05 FMC-01 TRSE-00 H-02 INR-07 INT-05 IO-13

JUSE-00 L-03 NSAE-00 NSC-05 NSF-01 OMB-01 PA-01 PM-04

PRS-01 SP-02 SS-15 USIA-06 SAL-01 FEA-01 OIC-02

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8. ALTHOUGH THERE WAS NO UNANIMITY, MOST APPEARED TO BELIEVE THAT THE TWELVE SHOULD ELABORATE THE REGIME. THE RIGHT TO EXPLOIT UNDER A REGIME SHOULD BE OPEN TO A BROAD GROUP WHILE THE RIGHT TO PARTICIPATE IN THE DECISION-MAKING OF THE ESTABLISHED REGIME SHOULD BE MORE RESTRICTIVE. SOME PRECONDITIONS SHOULD BE ELABORATED FOR STATES OTHER THAN THE TWELVE TO PARTICIPATE IN THE
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DECISION-MAKING. VARYING VIEWS WERE EXPRESSED AS TO WHETHER SIGNING THE ANTARCTIC TREATY WAS A PRECONDITION FOR PARTICIPATING IN THE RESOURCE REGIME BUT THERE WAS

GENERAL AGREEMENT THAT REGARDLESS OF HOW THAT WAS RESOLVED, THIRD STATES SHOULD OBSERVE THE PROVISIONS OF THE ANTARCTIC TREATY. THE USSR CONSISTENTLY STATED SUCH DISCUSSIONS WERE PREMATURE.

9. THERE WAS LITTLE DEBATE ON ENVIRONMENTAL PROTECTION BECAUSE OF THE ACTIVITIES OF THE OTHER WORKING GROUP. UK STATED ISSUE WAS HOW TO INSURE THAT OBLIGATIONS THE TWELBE MIGHT ELABORATE WERE BINDING ON OTHERS SUGGESTING IT MAY BE POSSIBLE TO DEVELOP A "SPECIAL CASE" ARGUMENT IN ORDER TO BIND NON-PARTIES. NEW ZEALAND CONCURRED WITH THE NECESSITY FOR DEVELOPING A SPECIAL CASE ARGUMENT AND STATED THEIR BELIEF THAT IT WAS ESSENTIAL FOR PRESENTATIONAL PURPOSES THAT THE REGIME FOCUS UPON A CONCERN FOR THE ENVIRONMENT.

10. IN A TIMID DISCUSSION OF LICENSING AUTHORITY, PROMINENCE WAS GIVEN TO CHILEAN SUGGESTION OF DUAL LICENSING (BY THE CLAIMANT AND BY A BODY OF THE AGREED REGIME.) US STATED DUAL LICENSING WAS CONSTRUCTIVE SUGGESTION THAT SHOULD BE CAREFULLY EXPLORED AND SUGGESTED OTHER POSSIBILITIES WHILE REJECTING APPROACHES WHICH WERE TANTAMOUNT TO RECOGNITION OF CLAIMS. FRANCE WAS INFLEXIBLE IN ASSERTING ITS VIEW THAT CLAIMANT SHOULD HAVE SPECIAL ROLE IN ITS TERRITORY. CHILE, WHILE STRESSING THE NECESSITY TO PREVENT EROSION OF ITS CLAIM, STATED ITS WILLINGNESS TO SEARCH FOR A CREATIVE FORMULA. WITH RESPECT TO WHOSE LEGISLATION WOULD BE APPLICABLE, THERE WAS A GENERAL SENSE THAT THIS WOULD BE INFLUENCED BY WHO ISSUES THE LICENSE. FRANCE WOULD HAVE THE CLAIMANT LEGISLATION APPLY AS WELL AS PROVIDING JURISDICTION FOR THE CLAIMANTS COURTS FOR RESOURCES DISPUTES. BELGIUM SURPRISINGLY AGREED THAT CLAIMANT LAW AND COURTS SHOULD APPLY, PRIVATELY STATING THIS POSITION WAS NECESSITATED BY BELGIUM'S LEGAL INABILITY TO APPLY AGREED MEASURES TO ANTARCTICA. NEW ZEALAND CONCURRED WITH FRENCH VIEW, WHILE CHILE STATED ISSUE OF LEGAL JURISDICTION IS BEST SOLVED IN THE SMAE
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MANNER AS THE ANTARCTIC TREATY. AUSTRALIA VIEWED THE JURISDICTIONAL QUESTION AS UNSOLVABLE BY CREATIVE ACCOMMODATION NOTING THAT RESOURCE ACTIVITIES IN THE ANTARCTIC WOULD NEED A LOGISTICAL BASE AND THIS COULD WELL BE IN AUSTRALIA. UK EXPRESSED THE VIEW THAT AN ACCOMMODATION COULD NOT BE REACHED WHICH EXPRESSLY GIVES A SPECIAL ROLE TO THE CLAIMANT STATE. THE UK STATED THE REGIME TO BE CREATED SHOULD BE SIMPLE AND INEXPENSIVE TO OPERATE WITH A MAJOR ROLE FOR INDIVIDUAL STATES AS EITHER SPONSORING STATE OR DESIG-

NATED STATE. US INDICATED DIFFICULTY WITH ANY SPECIAL
ROLE FOR CLAIMANT STATES AND SUPPORTED CONCEPT OF
JURISDICTION BASED ON NATIONALITY.

11. JAPAN, AND TO A LESSER EXTENT AUSTRALIA, SUPPORTED
USSR MORATORIUM PAPER WHILE UK, NEW ZEALAND, FRANCE AND
US STRONGLY OPPOSED THE MORATORIUM ASPECT.

12.THERE WAS ONLY THE MOST PRELIMINARY DISCUSSION OF
RESOURCES MANAGEMENT ISSUES, WITH THE US AND UK STRESSING
THE NECESSITY OF DEALING WITH THEM. SOME VIEWED THEM
AS WITHIN THE REALM OF THE TECHNICAL WORKING GROUP
WHILE OTHERS FELT THE REGIME NEED ONLY DEALWITH A
GENERAL FRAMEWORK AND DETAILED RESOURCE MANAGEMENT RULES
WOULD BE DEALT WITH SUBSEQUENTLY. NORWAY TOOK A SOME-
WHAT MIDDLE POSITION STATING THAT REGIME ITSELF MUST SET
FORTH HOW MUCH PETROLEUM TO PRODUCE AND THE RATE OF
PRODUCTION.

13. OPPOSITION WAS EXPRESSED TO A SEPARATE ITEM IN UK
PAPER DEALING WITH MAKING REGIME ACCEPTABLE TO THE WORLD
COMMUNITY. ARGENTINA STATED IT IS ONE THING TO
ESTABLISH "A REGIME OF NONDISCRIMINATORY ACCESS" FOR
THIRD PARTIES BUT SOMETHING ELSE TO ENCOURAGE THIRD
PARTIES TO PARTICIPATE IN ANTARCTIC ACTIVITIES. CHILE
STATED THAT IT WAS NOT INTERESTED IN RESOURCE ACTIVITIES
ITSELF BUT VIEWED DEALING WITH THE ISSUE AS A NECESSARY
EVIL. THE UK AND NEW ZEALAND STRESSED THAT FOR REGIME
TO BE ACCEPTABLE TO WORLD COMMUNITY IT MUST OFFER THEM
SOMETHING IN THE WAY OF PARTICIPATION, CITING PARTICI-
PATION IN RESOURCES ACTIVITIES AND REVENUES AS POSSIBLE
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EXAMPLES.

14. LEGAL/POLITICAL WORKING GROUP CONCLUDED ITS SUB-
STANTIVE DISCUSSIONS ON JULY 7 AND WILL DISCUSS ITS
REPORT ON 8 JULY.

15. COMMENT: DEL'S OBJECTIVE WAS TO MOVE U.K. PAPER
AS A NON-PREJUDICIAL FRAMEWORK FOR DISCUSSION TO ELUCI-
DATE VIEWS AND TO CREATE WHAT IN FACT WOULD BECOME THE
AGENDA FOR DISCUSSION OF THE RESOURCE ISSUE AT THE
NINTH CONSULTATIVE MEETING. EFFORT WAS LARGELY SUC-
CESSFUL IN GUIDING DISCUSSIONS AND IN PROVIDING FRAME-
WORK FOR RAPPORTEUR'S REPORT, BUT FINAL DETERMINATION
WHETHER ISSUES-ORIENTED APPROACH WILL SERVE AS A BASIS
FOR DISCUSSION, IN LIGHT OF CONTINUED SOVIET
INTRANSIGENCE, WILL NOT BE KNOWN UNTIL LAST PLENARY.
U.S. INTERVENTIONS WERE GENERALLY CHARACTERIZED AS PRE-

LIMINARY AND DESIGNED TO BE SUFFICIENTLY SUBSTANTIVE
AS TO ENCOURAGE SUBSTANTIVE DISCUSSIONS, AND
TO FURTHER THOUGHT IN CAPITALS. DEL SOUGHT TO MAKE CLEAR
IN CONSTRUCTIVE WAY THAT U.S. REGARDS ITS
POSITION ON SOVEREIGNTY AS STRONGLY AS CLAIMANTS
REGARD THEIRS.
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